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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. 93-41
)	
TRIAD FAMILY NETWORK, INC.)	File No. BPED-910227MD
Winston-Salem, North Carolina)	
Channel 207C3)	
)	
POSITIVE ALTERNATIVE RADIO, INC.)	File No. BPED-911119MC
Asheboro, North Carolina)	
Channel 207A)	
)	
For Construction Permit for a)	
New Noncommercial Educational)	
FM Station)	

To: Administrative Law Judge
Joseph P. Gonzalez

MASS MEDIA BUREAU'S COMMENTS IN SUPPORT OF
PETITION FOR LEAVE TO AMEND

1. On March 17, 1993, Positive Alternative Radio, Inc. ("Radio") filed a petition for leave to amend its application to specify a new transmitter and antenna site. The Mass Media Bureau submits the following comments in support of Radio's amendment.

2. This amendment was previously filed with the Commission on February 9, 1993, prior to designation. In its cover letter to the February 9, 1993, filing, Radio claimed "good cause." In support, Radio stated that in securing "reasonable assurance" for its original site, its principal, Vernon H. Baker, was assured by the site owner, with respect to costs, that "I'll treat you right." However, Radio explained that in December 1992, it was informed that the site rent would be \$1200 per month

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with payment in advance for the first year due within five days and no refunds. According to Radio, this sum was excessive and exceeded its financial means. Thus, Radio failed to meet the terms with respect to that site and was left without a site. Thereafter, Radio made arrangements to acquire its current proposed site, for which the agreed cost is \$200 per month, to commence with the start of construction. In the Hearing Designation Order, DA 93-223, released March 9, 1993, the Chief, Audio Services Division, returned the February 9, 1993, amendment because he found that Radio failed to demonstrate "good cause." The HDO did not specify what elements of a "good cause" showing were lacking. The HDO also required Radio to correct certain discrepancies with respect to its original site.

3. In support of its instant petition, Radio states that since the deadline expired for meeting the payment requirements for its original site, Radio has no site, thus necessitating the amendment to avoid dismissal of its application. Radio claims that its proposed amendment meets the requirements of Erwin O'Connor Broadcasting, Co., 22 FCC 2d 140, 143 (Rev. Bd. 1970). Attached to Radio's petition is a Petition for Reconsideration of HDO.¹ Included therein is a 11-16-91 handwritten letter (Exhibit

¹ Simultaneous with the filing of this Petition for Leave to Amend, Radio filed a Petition for Reconsideration of HDO with the Chief, Audio Services Division, requesting reconsideration of the return of its February 9, 1993, amendment. The Petition for Reconsideration is procedurally defective. The proper relief was to file an application for review with the Presiding Judge requesting certification to the Commission of that portion of the

A) from Vernon Baker, on behalf of Radio, to Edward Swicegood, the owner of Radio's proposed site. In his letter, Baker states, inter alia. "I gathered from you that we have reasonable

5. The Bureau supports grant of Radio's petition for leave to amend. Initially, we submit that the Presiding Judge is not foreclosed from taking action which differs from that taken in the HDO because the HDO does not contain a reasoned analysis for its denial of Radio's amendment. See Atlantic Broadcasting Co. Inc., 5 FCC 2d 717 (1966). Moreover, additional information has been furnished in the instant petition for leave to amend. Specifically, it is not clear exactly why Radio's February 9, 1993, amendment was returned, although it appears that the rejection resulted from the lack of adequate information demonstrating that Radio had "reasonable assurance" with respect to its original site. However, Baker's 11-16-91 letter, which was not before the Bureau,² demonstrates that Radio met the Commission's requirements for "reasonable assurance" as set forth in Elijah, with respect to its original site. The letter discusses the location, includes some terms, and reflects that Baker believed that he had obtained "reasonable assurance" from the site owner. Baker's belief was apparently buttressed by the site owner's assurance that he would "treat [him] right." Also, based on Baker's years of experience in the broadcast business in the area, he had reason to believe that the monthly cost would be

² There is no explanation why this letter was not furnished in the February 9, 1993, amendment.

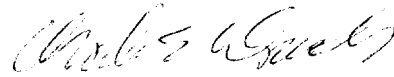
in the range of \$150-200 for the property.³ Thus, based on the
information now provided by Radio, the Bureau submits that Radio

competing applicant. Azalea Corp. 31 FCC 2d 561 (1971).

Additionally, the Bureau's engineering staff has reviewed the amendment and has concluded that it complies with the Commission's technical requirements.

7. Based on the foregoing, the Bureau supports grant of Radio's petition and acceptance of its amendment.⁴

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has, on this 26th day of March, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments in Support of Petition for Leave to Amend"** to:

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